

New Source Review Permitting Program Updates

**2022 Regional, State, and Local (RSL) Dispersion Modelers' Workshop
July 13, 2022**

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Overview

- NSR Actual-to-Projected-Actual Applicability Test Memo
- Fugitive Emissions Rule
- Project Emissions Accounting Rule
- Minor NSR Program Provisions
- Potential to Emit Definitions
- Outer Continental Shelf Permitting
- Environmental Justice
- Electronic Systems & Training



NSR Actual-to-Projected-Actual Applicability Test Memo

- Memo issued December 7, 2017
- Communicated EPA's intent to implement the regulations and exercise its enforcement authority with respect to the use of the actual-to-projected-actual applicability test
- Four main messages:
 1. EPA review of pre-project applicability analyses
 2. The role of post-project actual emissions in major modification applicability
 3. Consideration of a source's intent to manage post-project emissions in the pre-project projection
 4. Determining Excludable emissions
- EPA is reviewing this memorandum under EO 13990

Fugitive Emissions Rule

- 2008 Rule exempted non-listed source categories from considering fugitive emissions in determining major modification applicability
- In 2009, EPA granted an NRDC petition for reconsideration of the 2008 Rule and stayed its effectiveness (76 FR 17548; March 30, 2011)
- Litigation held in abeyance
- EPA is working on a proposal that will address whether all sources, or only sources in listed source categories, must include fugitive emissions towards major modification thresholds
- Target proposal date: summer 2022

Project Emissions Accounting Rule

- Guidance issued March 13, 2018, interpreted the existing NSR regulations to provide for the accounting of both emissions increases and decreases in step 1 of the NSR applicability process (83 FR 13745)
- Final rule codifying PEA effective Dec. 24, 2020 (85 FR 74890; Nov. 24, 2020)
- Petition for reconsideration of final rule and request for withdrawal of guidance memo submitted jointly by 5 environmental NGOs dated January 22, 2021
- Separate petitions for review in D.C. Circuit filed by NGOs and jointly by several states
- Letter dated October 12, 2021
 - EPA denied the petition for reconsideration on the grounds that the petitioners did not satisfy the requirements of CAA section 307(d)(7)(B)
 - EPA is taking no action at this time on petitioners' request that EPA withdraw the March 2018 memorandum
 - EPA plans to initiate a discretionary rulemaking to address the concerns raised by petitioners
- Litigation held in abeyance
- Target proposal date: Spring 2023

Evaluating Sufficiency of Minor NSR Program Provisions

- EPA is considering a rulemaking to add specificity to the public participation provisions for minor NSR programs, while maintaining flexibility, with the intent to improve the effectiveness and nationwide consistency of minor source permit programs
 - Proposal tentatively planned 2023
- July 8, 2021, OIG Report: EPA Should Conduct More Oversight of Synthetic Minor-Source Permitting to Assure Permits Adhere to EPA Guidance
 - Update Agency guidance on practical enforceability of PTE limits
 - Develop and implement a synthetic minor permitting oversight plan
 - Revise the Agency's guidance to communicate its key expectations for synthetic-minor-source permitting to state and local agencies
 - Identify state/local/tribal agencies in which state CAA permit program implementation fails to adhere to the public participation requirements for synthetic-minor-source permit issuance and take appropriate steps

Potential to Emit Definitions

- Part of the reconsideration of Reclassification of Major Sources as Area Sources under Section 112 Rule (MM2A) promulgated November 19, 2020 (see 85 FR 73854); effective January 19, 2021
 - Final rule changed “federally enforceable” to “enforceable” but did not finalize proposed amendment to PTE definition in 40 CFR Part 63
 - EPA proposed, but did not take final action on the definition of PTE, to define “legally and practicably enforceable” PTE limits, or to establish effectiveness criteria for those limits, deferring that to a separate future action
 - EPA received comments from stakeholders on the proposed effectiveness criteria and proposed amendments to 40 CFR 63.2, including the interactions and effects of the proposed amendments with other CAA programs, including NSR and title V
- EPA is reconsidering the MM2A final rule under EO 13990
- We are joining forces to address the parallel PTE definitions across programs (NESHAP, NSR, and Title V program regulations) as part of the MM2A reconsideration process
- Target proposal date: early 2023

Outer Continental Shelf (OCS) Permitting

- OCS air permits are “umbrella permits” for air pollution control from sources located in the OCS. OCS permitting requirements include:
 - NSPS, NESHAPs, NSR/PSD, title V and any other state/local requirements applicable in the Corresponding Onshore Area; state requirements don’t apply in the Outer OCS
- EPA has delegated the OCS permitting program for inner OCS projects to Virginia, Maryland and Delaware and 4 permitting authorities in CA (Santa Barbara, San Luis Obispo, South Coast and Ventura County)
- Two OCS wind energy permits have been issued recently by EPA:
 - Vineyard Wind 1 (May 2021); facility began construction in Nov. 2021
 - South Fork Wind (Jan. 2022); facility began construction in Feb. 2022
- Recent policy interpretations:
 - Pull-ahead anchor Cable Laying Vessels are not OCS sources
 - Permitting-related emissions offsets are not required for OCS construction emissions
- Emerging OCS permitting issues currently being evaluated include:
 - Which equipment, activities or facilities constitute an OCS source and at what point in time does the OCS source exist?
 - Air quality modeling analysis requirements for OCS sources’ construction emissions during extended construction periods (e.g., > 2 years)

Environmental Justice

- EPA has made it a priority to infuse equity and environmental justice principles and priorities into all EPA practices, policies, and programs
 - EPA has defined environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies”
 - EPA is assessing how to address potential environmental justice concerns in rulemakings, SIP reviews, and permitting
- Relevant Directives and Memoranda
 - EO 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
 - EO 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis
 - EO 14008, Tackling the Climate Crisis at Home and Abroad
 - April 7, 2021, Message from Admin. Regan to all EPA offices
 - May 5, 2022, Memorandum from Asst. Attorney General: Comprehensive Environmental Justice Enforcement Strategy
 - June 13, 2022, Memorandum from Admin. Regan: Holding Ourselves Accountable for Implementation of the FY2022-2026 EPA Strategic Plan and EPA’s Equity Action Plan

Environmental Justice (cont.)

Permitting

- Identifying best practices for promoting meaningful engagement with communities
- Identifying communities of concern, developing appropriate analytical tools and safeguards
- EPA Regions have been commenting on selected permits to recommend that the permitting authority undertake discretionary consideration of EJ consistent with these principles
- Example EPA comment letters
 - Ajax Materials Corp. (MI)
 - Fulcrum Centerpoint (IN)
 - Becton, Dickinson and Co. (AZ)
 - Suncor Energy, Inc. (CO)

Environmental Justice (cont.)

Resources

- EPA Legal Tools to Advance Environmental Justice
- Office of Environmental Justice (OEJ) Toolkit for Assessing Potential Allegations of Environmental Injustice
- EJScreen 2.0
- <https://www.epa.gov/environmentaljustice>

Electronic Systems & Training

- Electronic Permitting System (EPS)
 - EPS was developed in close coordination with state partners and ECOS to provide a central system for states to transmit Clean Air Act permits for EPA review, and then facilitate communication between EPA and the state regarding EPA review of those permits
 - Completed March 2020
 - As of March 2022, EPS has received about 4,500 permit actions from 22 states and 63 local permitting authorities spread over Regions 1, 4, 9, and 10
- New RACT/BACT/LAER Clearinghouse (RBLC) is being explored (funding dependent)
- Training
 - Objective to create standardized training courses on various permitting topics to help train new staff in air agencies
 - Received state agency input on recommended NSR training topics
 - Training modules are/will be available on the APTI website: <https://www.epa.gov/air-quality-data-and-tools/air-pollution-training-institute-public-training-site>

Questions and Comments

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